

COURT OF APPEALS NO. 47843-9-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON  
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COURTNEY RIDGE ESTATES OWNERS ASSOCIATION, a  
Washington limited liability company,

Appellant

vs.

PUYALLUP RIDGE ESTATES OWNERS  
ASSOCIATION, a Washington nonprofit corporation,

Respondent

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BRIEF OF APPELLANT

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## TABLE OF CONTENTS

	<b>Page</b>
I. ASSIGNMENTS OF ERRORS .....	1
A. The trial court erred in granting Plaintiff's Motion for Reconsideration on July 10, 2015, which granted Plaintiff's Motion for Summary Judgment .....	1
B. The trial court erred in vacating the Order Granting Summary Judgment to Defendant ....	1
II. ISSUES PRESENTED .....	1
A. Does Plaintiff Puyallup Ridge have authority to amend the Condominium Declaration of Courtney Ridge Estates Master Association without the consent of Defendant Courtney Ridge Estates Owners Association? .....	1
B. Does Defendant Courtney Ridge Estates have an interest in the common elements of the Courtney Ridge Estates Master Association?...	1
C. Is Defendant Courtney Ridge Estates Owner's Association a member of Courtney Ridge Estates Master Association? .....	1
III. STATEMENT OF FACTS.....	2
A. FACTUAL BACKGROUND .....	2
i Development of Units A through D ...	2
ii Development of Units E and F .....	6
iii Restrictions on Use .....	7
B. PROCEDURAL BACKGROUND .....	8

IV.	ARGUMENT .....	9
A.	STANDARD OF REVIEW.....	9
B.	AN AMENDMENT TO THE MASTER DECLARATION REQUIRES APPROVAL OF THE OWNER’S ASSOCIATION.....	10
C.	THE ESTATES OWNERS HAVE AN INTEREST IN THE COMMON ELEMENTS OF THE MASTER ASSOCIATION .....	11
D.	OWNERS ASSOCIATION MEMBERS ARE MEMBERS OF THE MASTER ASSOCIATION .....	24
V.	CONCLUSION .....	26

## **TABLE OF AUTHORITIES**

### **Table of Cases**

<i>Alternative Development, Inc. v. St. Lucie Club and Apartment Homes Condominium Association, Inc.</i> 608 So.2nd 822 (Fl. App. 1992)	13
<i>Dumont v. City of Seattle</i> , 148 Wn.App. 850, 860-861, 200 P.3d 764 (2009)	10
<i>Hisle v. Todd Pac. Shipyards Corp.</i> , 151 Wn.2d 853, 860, 93 P.3d 108 (2004)	9, 10
<i>Korshund v. DynCorp Tri-Cities Servs., Inc.</i> , 156 Wn.2d 168, 177, 125 P.3d 119 (2005)	10
<i>Kruse v. Hemp</i> , 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)	10
<i>Lake v. Woodcreek Homeowners Ass'n</i> , 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)	15
<i>Scott v. Sandestin Corp.</i> , 491 So.2nd 334 (Fl. App. 1986)	13
<i>Sellested v. Wash. Mut. Sav. Bank</i> , 69 Wn.App. 852, 857, 851 P.2d 716 (1993)	
<i>Smith v. Laguna Sur Villas Community Association</i> , 79 Cal. App. 4th 639 (Cal. App. 2000)	13
<i>State Farm Fire &amp; Cas. Co. v. English Cove Assoc. Inc.</i> , 121 Wn. App. 358, 364-66 (2004)	26

## **Statutes, Codes**

Chapter 64.34.020 (9) RCW	22, 25
Chapter 64.34.020 (23) RCW	12
Chapter 64.34.224(1) RCW	27
Chapter 64.34.224 (2) RCW	23
Chapter 64.34.224(b) RCW	24
Chapter 64.34.232 RCW	18, 20
Chapter 64.34.232(2)(c) RCW	18
Chapter 64.34.236 RCW	20
Chapter 64.34.276 RCW	12
Chapter 64.34.278 RCW	14
Chapter 64.34.300 RCW	11
Chapter 64.34.304 RCW	14
Chapter 64.34.304 RCW	11

COMES NOW the Appellant, COURTNEY RIDGE ESTATES OWNERS ASSOCIATION, by and through its attorney, Kelly DeLaat-Maher of Smith Alling, PS, and submits Appellant's Brief on appeal as follows:

**I. ASSIGNMENTS OF ERROR**

A. The trial court erred in granting Plaintiff's Motion for Reconsideration on July 10, 2015, which granted Plaintiff's Motion for Summary Judgment; and

B. The trial court erred in vacating the Order Granting Summary Judgment to Defendant.

**II. ISSUES PRESENTED**

A. Does Plaintiff Puyallup Ridge have authority to amend the Condominium Declaration of Courtney Ridge Estates Master Association without the consent of Defendant Courtney Ridge Estates Owners Association?

B. Does Defendant Courtney Ridge Estates have an interest in the common elements of the Courtney Ridge Estates Master Association?

C. Is Defendant Courtney Ridge Estates Owner's Association a member of Courtney Ridge Estates Master Association?

### **III. STATEMENT OF FACTS**

#### **A. FACTUAL BACKGROUND**

##### **i. Development of Units A through D**

Reich Land, Inc., initially acquired the undeveloped property at issue and transferred it to an LLC created by Reich for the purposes of development: Courtney Ridge, LLC. CP 218. Courtney Ridge, LLC, developed and recorded the Binding Site Plan, along with the initial Condominium Declaration and survey map of Courtney Ridge Estates Master Association (an airspace condominium) (hereinafter the “Master Declaration”). CP 48-107. The Master Declaration created the Courtney Ridge ESTATES Master Association airspace condominium (hereafter the “Master Condominium”) and the Courtney Ridge Estates Master Association Condominium Owners Association (the “Master Association”). Courtney Ridge, LLC, was the initial Declarant. The Master Condominium consisted of six airspace condominiums (Units A through E), with the intention that individual residential units would be developed within each of the airspace condominiums. *Id.*

When the individual units completed within each airspace unit were developed, those individual units would become a part of Courtney Ridge Estates (hereafter the “Owners Condominium”) and the Courtney Ridge Estates Owners Association (hereafter the “Owners Association”).

pursuant to the Condominium Declaration of Courtney Ridge Estates (An Airspace Condominium) (hereafter the "Owners Declaration"). Courtney Ridge, LLC, was also the Declarant under the Owners Declaration. This scheme is identified under Article XXXIII of the Master Declaration, Section 33.1. It provides in pertinent part as follows:

This Condominium consists of six (6) airspace units. The Declarant reserves the right to withdraw each airspace unit from the Condominium and then convert that Condominium into another Condominium known as Courtney Ridge Estates Condominiums so that within each airspace unit there would be created new units within buildings to be constructed in this airspace. Upon including that airspace unit within the Condominium to be known as Courtney Ridge Estates Condominiums, it shall be withdrawn from this Condominium and shall not be subject to any of the restrictions or conditions set forth in this Declaration. At such time as all of the airspace units have been withdrawn from the Condominium and have been included in the Condominium known as Courtney Ridge Estates Condominiums, then all of the rights, obligations and conditions under this Declaration shall terminate. . .

CP 48-103. To clarify, when Phase I of the Owners Association was either begun or completed, the Declarant recorded the Owners Declaration (Phase I), along with corresponding survey plans and maps. CP 221-285. When completed, each subsequent phase involved the recording of an amendment to the Owners Declaration. Units A through D of the Master Condominium ultimately became Phases I through IV of the Owners Condominium. CP 286-321.



Each time the Owners Declaration was amended to include a subsequent phase, the Master Declaration was also amended, for the purpose of essentially “transferring” the new individual units from the Master Condominium. CP 170-181. The First Amendment to Amended Restated Condominium Declaration of Courtney Ridge Estates Master Association transferred the units within airspace Unit A from the Master Condominium. It provides in part as follows:

A. Unit A of the Courtney Ridge Estates Master Association Condominium is and will constitute the first phase of Courtney Ridge Estates, which condominium will consist of eleven units which shall be situated within said Unit A.

B. Pursuant to the provisions of the Declaration, *each condominium unit of Courtney Ridge Estates* created within said airspace units shall not be subject to any of the restrictions or conditions as set forth in the above-referenced Declaration.

CP 170-172. The same language was used for Airspace Units B, C and D. Thus, the *individual units* created in Phases I through IV of the Owners Condominium are not subject to the Master Declaration, but instead are subject to the restrictions and conditions of the Owners Declaration. Similarly, Units E and F of the Master Association are not subject to the Owners Declaration.

Puyallup Ridge takes the position that when each Phase of Courtney Ridge was added, the Master Association essentially shrank.

Mr. Lynn stated as follows during oral argument on Summary Judgment:

. . . And a minute ago, you made an important point I think which was, ultimately, if all of these units were condominiumized according to the original visions, there would be nothing left of the Master Declaration. So it shrunk. As each phase was pulled out of the Master and subjected to the Courtney Ridge Estates Declaration, the master association shrunk by one member. So in the end, there would have been none.

CP 387. Yet, nothing in the Amendments to either the Master Declaration or the Owners Declaration demonstrate that the Master Association was shrinking with each completion of a phase within the Estates Owner's Association. Instead, the amendments appear to provide for the opposite.

By the time Phase IV of Courtney Ridge Estates was added, the governing documents of each association demonstrated that the Estates owners had an interest in the common elements of the Master Association. For example, the Fourth Amendment to the Master's Declaration shows that Courtney Ridge Estates has a 2/3rds interest in the common elements of the Master Association. CP 180. Similarly, the Amendment to the Fourth Amendment to the Estates Declaration provided that the individual unit owners had a 1/54<sup>th</sup> allocated interest in the Estates Association (there being 54 units); and a 1/92<sup>nd</sup> interest in the Master Association – which included an interest in the undeveloped airspace units E and F. CP 313-316. Further, the Master Association plat map was never amended in

order to adjust the boundaries of the Association upon each “withdrawal.”

**ii. Development of Units E and F**

It is undisputed that Units E and F were initially intended to be part of the Owners Association upon completion of development by Courtney Ridge, LLC, at which time, the Master Association would have terminated. However, Reich Construction and Courtney Ridge ran into financial difficulty in 2009, and transferred its remaining interest to Horizon Bank in lieu of foreclosure. In addition, Courtney Ridge, LLC, transferred its Development Rights and Special Declarant’s Rights to Horizon Bank in July of 2009, for both Courtney Ridge Estates and for Courtney Ridge Estates Master Association. CP 318-321. The transfer was made to Horizon Bank to allow them to hold the rights for ultimate transfer to a third party.

Puyallup Ridge, LLC, purchased Units E and F from Washington Federal, who appear to have acquired the property from Horizon. CP 32-35. There does not appear to be a recorded transfer of Declarant’s rights from Horizon to Washington Federal. Horizon Bank was closed by the Department of Financial Institutions in 2010, with its accounts apparently acquired by Washington Federal. CP 194. The Bargain and Sale Deed to Puyallup Ridge included an alleged transfer of Declarant’s Rights under the Master Declaration only. CP 37-38. It contains the reservation that

Puyallup Ridge does not assume and agree to perform the Declarant's prior obligations under the Master Declaration. *Id.* Further, the Transfer contains the following language: "Washington Federal. . . does hereby transfer, convey, assign and set over to Puyallup Ridge, LLC, a Washington limited liability company, all of the development rights, special declarant rights, and other rights defined in and reserved to declarant in the Master Declaration, *if any.*" *Id.*

**iii. Restrictions on Use**

At the time that Puyallup Ridge purchased the remaining Airspace units, the Declaration provided that units constructed in accordance with the Master Declaration (constructed as either a Unit Owner or as the holder of Declarant's Rights) were subject to a rental restriction. Section 11.3 addressed leases, which contained a limitation that only 15% of the units subject to the Declaration be leased at one time (in contrast to the Owners Declaration, which has a 20% rental restriction under section 11.16). CP 69, CP 136.

On January 28, 2014, without conferring or consulting with the Owners Association, Puyallup Ridge recorded an Amendment to the Condominium Declaration of Courtney Ridge Estates Master Association under Pierce County Auditor's No. 201401280278. CP 323-324. That Amendment provides in pertinent part as follows:

1. Article 11, **Use; Regulations of Uses; Architectural Uniformity**, in particular Section 11.3 **Leases**, shall be amended to provide that there shall not be any restrictions on the number of tenants. In addition, the minimum rental period shall be thirty (30) days as opposed to six (6) months.

*Id.* This amendment is inconsistent with the remainder of the community and the original plan of development, which did not anticipate or allow short term rentals.

#### **B. PROCEDURAL BACKGROUND**

Puyallup Ridge filed suit in December of 2014 for declaratory damages. CP 1-6. Courtney Ridge filed an Answer, Affirmative Defenses and Counterclaim seeking declaratory relief. CP 7-14. Puyallup Ridge filed its Motion for Summary Judgment, which was heard on May 8, 2015. Following argument, the court determined that Summary Judgment was appropriate in Courtney Ridge's favor. CP 367-368. In oral ruling, the court stated as follows:

As I say, this was a very interesting deal. As I say, my initial inclination was Mr. Lynn's description made perfect sense and I think that is what the plan was. I don't think they ever actually did it and the result is those airspace units were retained by the individual condominium owners, so there you go. I would have thought they would want to keep complete control, but I don't think this drafted the changes to make that happen. . .

VRP 27:22-25; 28:1-5.

Subsequently, Puyallup Ridge filed a Motion for Reconsideration, requesting the court to reconsider its grant of Summary Judgment in Courtney Ridge's favor. CP 369-378. The court ultimately heard Puyallup Ridge's Motion on July 10, 2015. The court stated as follows:

Upon further reflection and as I reread it again, the language of the amendment, even though it is indirect, it amounts to the same thing, which was that Unit A in this case constitutes the first phase of the Estates. That condominium will consist of 11 units to be in said unit. That therefore, included in the airspace within the condominium to be known as Courtney Ridge Estates Condominiums, and that, by operation of the document, withdrew [sic]. As I say, that was not crystal clear, and it remained fairly opaque, but that is where I'm coming from. That's why I changed my mind, and I think that's right. There may be other sundry issues, but I think Mr. Lynn - - although this doesn't really drive it, Mr. Lynn suggested it might be even more trouble if I left it the way it is compared to leaving - - by not changing it, but - although I suspect by ruling for Mr. Lynn on this thing, I probably create fewer problems for everybody.

VRP 19:20-25; 20:1-12. Thereafter, the court entered an Order Granting Plaintiff's Motion for Reconsideration and Granting Summary Judgment to Plaintiff. CP 458-460. Courtney Ridge timely filed this appeal. CP 461-465.

#### **IV. ARGUMENT**

##### **A. STANDARD OF REVIEW**

On review of an order for summary judgment, the court performs the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*,

151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)). As specifically stated in *Kruse v. Hemp*, in reviewing a summary judgment order, an appellate court evaluates the matter de novo, performing the same inquiry as the trial court. *Kruse*, at 722.

On an appeal, the appellate court must engage in the same inquiry as the trial court, “. . . construing the facts and reasonable inferences therefrom in the manner most favorable to the nonmoving party to ascertain whether there is a genuine issue of material fact.” *Dumont v. City of Seattle*, 148 Wn.App. 850, 860-861, 200 P.3d 764 (2009) (citing to *Sellested v. Wash. Mut. Sav. Bank*, 69 Wn.App. 852, 857, 851 P.2d 716 (1993)). Summary judgment is proper “if reasonable persons could reach but one conclusion from the evidence presented.” *Korshund v. Dyncorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005). Here, the court improperly concluded that summary judgment was appropriate in Puyallup Ridge’s favor upon reconsideration. To the contrary, the court should have affirmed its earlier decision in Courtney Ridge’s favor, based upon the documents at issue.

**B. AN AMENDMENT TO THE MASTER DECLARATION  
REQUIRES APPROVAL OF THE OWNER’S  
ASSOCIATION.**

In making its decision on reconsideration, the court essentially

determined that the Master Association and the Owner's Association are two separate independent entities. Thus, the approval of the members of the Owner's Association was not required when the Master Declaration was amended to remove any rental restriction. For several reasons, this determination was in error.

**i. The Owners Association is a Sub-Association of the Master Association.**

Puyallup Ridge takes the position, which was adopted by the court upon reconsideration, that once Airspace Units A through D were developed, their relationship with the Master Association was completely severed. This interpretation is contrary to the typical operation of a master association, as defined by the Washington Condominium Act, and is also contrary to certain provisions of the Master Declaration and its Amendments, as well as the Owners Declaration and Amendments.

The Washington Condominium Act governs all condominiums in this state. RCW 64.34.300 provides that a unit owners association must be organized at the time the first unit in a condominium is to be conveyed. It dictates that the "association shall be organized as a profit or non-profit corporation." All owners associations are therefore corporations. Each has the broad powers provided by RCW 64.34.304.



The Washington Condominium Act defines “master association” as follows:

(23) “Master association” means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.”

RCW 64.34.020(23). As pointed out above, the statute defines master association by reference to RCW 64.34.276. The Washington Condominium Act is based upon the *Uniform Condominium Act*. Official Comment 1 to the Uniform Condominium Act upon which RCW 64.34.276 is based provides further explanation as to the use of a master association:

(1) It is very common in large or multi-phased condominiums, particularly those developed under existing laws, for the declarant to provide a master or umbrella association which provides management services or decision-making functions for a series of smaller condominiums. While it is expected that this phenomenon will be less necessary under this Act because of the permissible period of time for declarant's control over the project, it is nonetheless possible in larger developments that this form of management will continue. Moreover, this section should be of significant benefit to the large number of condominiums created under prior law which have need for the benefit of a provision on master associations.

CP 210-212.

Simply put, master associations are entities to which other condominium associations have delegated a portion of their powers. They

serve as “umbrella” organizations to manage a number of separate, individual condominiums or to own and manage common areas of a larger development (open spaces, recreational facilities, etc.). They are also used by developers to maintain control of phased developments, which was likely the intention here.

The case law illustrates ways in which master associations have been used. See, e.g., *Scott v. Sandestin Corp.*, 491 So.2nd 334 (Fl. App. 1986) (development included a number of separate condominiums, each having a homeowners association, and a master association to maintain roadways, lakes and lagoons, landscaping, security, and similar matters for the entire, multi-building project); *Alternative Development, Inc. v. St. Lucie Club and Apartment Homes Condominium Association, Inc.* 608 So.2nd 822 (Fl. App. 1992) (phased development for eighteen separate condominium buildings, each with its own owners association, and a master property owners association responsible for maintenance and control of the roadway system, recreational facilities, utilities and other portions of the common real property); *Smith v. Laguna Sur Villas Community Association*, 79 Cal. App. 4th 639 (Cal. App. 2000) (development consisted of a 253-unit condominium project with its own association and a separate master association that owned the open space

surrounding the development). These cases are cited to demonstrate how master associations are used.

RCW 64.34.278 deals with the opposite situation – the delegation of power downward from a master condominium association to a sub-association, which is perhaps more akin to the development here. RCW 64.34.278 provides in pertinent part as follows:

- (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of unit owners owning less than all of the units in a condominium, and where those unit owners share the exclusive use of one or more limited common elements within the condominium or share some property or other interest in the condominium in common that is not shared by the remainder of the unit owners in the condominium, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section. The delegation of powers to a subassociation shall not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

...

- (6) The declaration of the condominium creating the subassociation may provide that the authority of the board of directors of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. . .

The statute essentially provides that if the declaration provides for the exercise by, or delegation of power to, another corporation that exercises

those powers on behalf of a group consisting of less than all of the unit owners, the provisions of the Act apply.

Here, the individual unit owners are specifically required pursuant to the terms of the Amendments to the Master Declaration to look to the Owners Declaration for the rights and reservations to which they are subject. The amendments did not, however, remove the underlying airspace unit from the Master Association however.

**ii. The Recording of the Amendment did not Automatically Withdraw Airspace Units A through D.**

In its Motion for Reconsideration, Puyallup Ridge argued, and the court apparently agreed, that the recording of the amendments to the Master Declaration had the effect of automatically withdrawing the airspace units from the control of the Master Declaration and from the Master Association in its entirety. The governing documents of the two Associations lack statutorily required elements in order to effectuate a withdrawal.

A condominium declaration is like a deed, the review of which is a mixed question of law and fact. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). The factual issue is the Declarant's intent, which is discerned from the face of the declaration; the declaration's legal consequences are questions of law. *Id.* On

reconsideration, Puyallup Ridge argued that the language of Section 33.1 of the Declaration allowed the airspace units to be automatically withdrawn upon recording of the amendments. Upon review of the governing documents as a whole, it is clear that this is not what actually occurred. Simply stating that a unit will be withdrawn does not make it so. Additional steps are to be followed pursuant to statute to effectuate a withdrawal.

The language of Section 33.1 of the Master Declaration is not in dispute. It provides:

This Condominium consists of six (6) airspace units. The Declarant reserves the right to withdraw each airspace unit from the Condominium and then convert that Condominium into another Condominium known as Courtney Ridge Estates Condominiums so that within each airspace unit there would be created new units within buildings to be constructed in this airspace. **Upon including that airspace unit within the Condominium to be known as Courtney Ridge Estates Condominiums, it shall be withdrawn from this Condominium and shall not be subject to any of the restrictions or conditions set forth in this Declaration.** At such time as all of the airspace units have been withdrawn from the Condominium and have been included in the Condominium known as Courtney Ridge Estates Condominiums, then all of the rights, obligations and conditions under this Declaration shall terminate. . .

CP 98. The language provides that when the airspace unit was included in Courtney Ridge Estates, it would be withdrawn from the Master. However, the airspace units were never actually withdrawn. Only the

individual units of Courtney Ridge Estates were made exempt from the restrictions and conditions of the Master Association. The First Amendment to the Amended Restated Condominium Declaration of Courtney Ridge Estates Master Association provides, in part, as follows:

A. Unit A of the Courtney Ridge Estates Master Association Condominium is and will constitute the first phase of Courtney Ridge Estates, which condominium will consist of eleven units which shall be situated within said Unit A.

B. Pursuant to the provisions of the Declaration, *each condominium unit of Courtney Ridge Estates* created within said airspace units shall not be subject to any of the restrictions or conditions as set forth in the above-referenced Declaration.

CP 170. This language was troubling to court at the summary judgment hearing that resulted in a decision in the Estates' Owner's favor. At that hearing, the court correctly queried as follows:

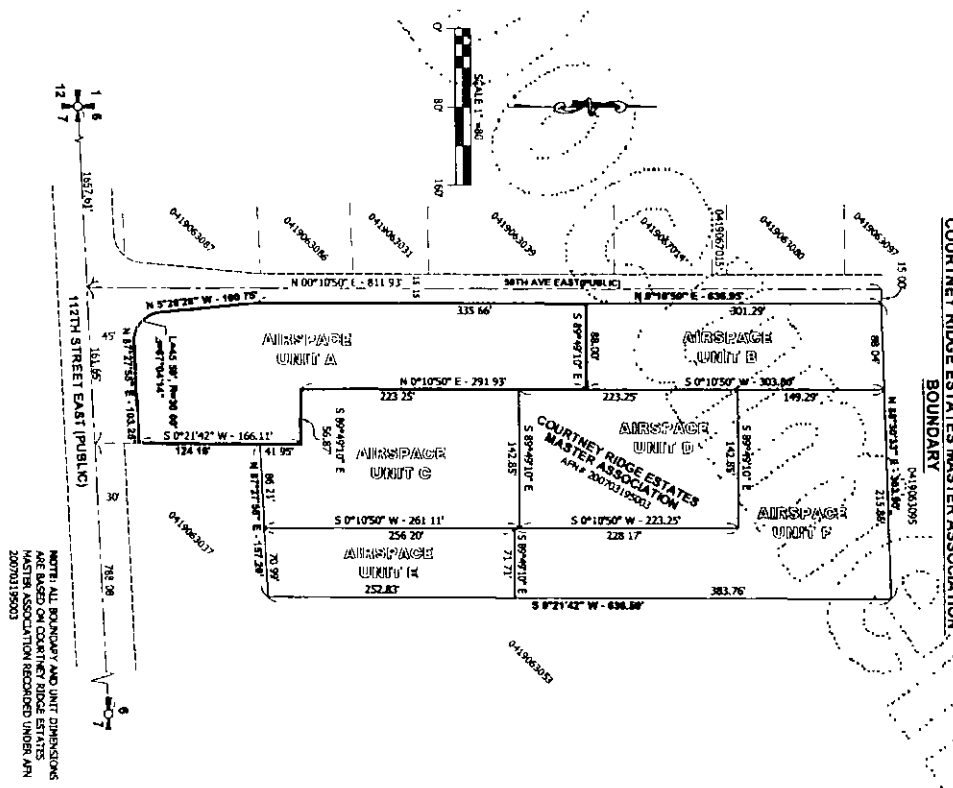
. . . I guess I am saying that the language in Paragraph A doesn't purport to convey anything or withdraw anything or transfer anything. It's the second provision *that does, right*, and it says, Each condominium unit created within said airspace shall not be subject etcetera, etcetera.

CP 387. The First Amendment's failure to withdraw Unit A from the Master Association and the removal of the individual units from the restrictions and conditions of the Master Declaration leaves Section 33.1 of the Master Declaration with little effect as to the underlying airspace units.

Additional authority supports the court's decision on Summary Judgment and the Owners Association's position. RCW 64.34.232 requires that a survey map and plans be recorded simultaneously with the Declaration. RCW 64.34.232(2)(c) requires that any land to be withdrawn from the condominium shall be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM." This requirement is missing from the Master Association survey map and plans recorded March 19, 2007, under Pierce County Auditor's No. 200703195003. CP 105-107. Under RCW 64.34.236, when development rights are exercised, such as withdrawal or addition to a condominium, compliance with RCW 64.34.232 is required. Thus, upon each "withdrawal", the survey map and plans should have been amended to show that the unit or area of land is no longer subject to the Declaration or included in the condominium. This too did not occur. In effect, the boundaries of the Master Association should have shrunk, as argued by Mr. Lynn in oral argument, but no amended map or survey allowing for this to happen was ever filed. Thus, the boundaries of the Master Association remain the same.

To further the point, when the Declarant completed each phase of Courtney Ridge Estates, they amended the survey map and plans of Courtney Ridge Estates to add individual units created within each airspace into the Owner's Association. CP 283-284. The second page of

each survey map for each Phase of the Estates contains a map depicting the Master Association boundaries, within which the Owner's Association is located. The boundaries of the Master Association for Phase I of the Owner's Association appear as follows:



CP 284. The survey map and plans for Phase IV of Courtney Ridge Estates contains an identical reference to the boundaries of Courtney Ridge Estates Master Association, which clearly continue to include Airspace Units A through D, despite Puyallup Ridge's position that those units had been removed from the Master Association and the Master Association has "shrunk". CP 420. Further, Page 3 of the survey, which



delineates the individual units included within Phase IV, still contains a reference to Airspace Unit D. CP 421.

In sum, although Section 33.1 of the Master Declaration may have contemplated withdrawal of the airspace units, the subsequent amendments establishing the Phases of the Estates did not act to withdraw the airspace units from the Master Association. This is supported by the undisputed fact that the survey maps and plans were not amended to “withdraw” Units A through D from the Master Association, which is required by RCW 64.34.232 and RCW 64.34.236. Compliance with the statute is not discretionary. Failure to comply with the statute causes Puyallup Ridge’s argument to fail.

**C. THE ESTATES OWNERS HAVE AN INTEREST IN THE COMMON ELEMENTS OF THE MASTER ASSOCIATION**

The conclusion that the underlying airspace unit was not removed from the Master Association is bolstered by review of the allocated interests in common elements for each association. For example, when the Master Declaration was initially recorded on March 19, 2007, under Auditor’s No. 200703190705, it broke down the six airspace units’ fractional interests in common elements as follows:

**EXHIBIT B**  
Description of Units

Unit Identifying No.	Square Footage Within Unit	Fractional Interest in Common Element
A	49,209	1/6th
B	26,626	1/6th
C	35,325	1/6th
D	31,891	1/6th
E	18,147	1/6th
F	49,296	1/6th

CP 103. When the First Amendment to the Master Association was recorded that "withdrew" Unit A from the Association and created Phase I of the Estates, Exhibit B of the Master Declaration was amended as follows:

**EXHIBIT B**  
Description of Units

Unit Identifying No.	Square Footage Within Unit	Fractional Interest in Common Element
A	49,209	1/6th of the common element portion of Unit A is transferred to Courtney Ridge Estates an Airspace Condominium Phase I
B	26,626	1/6th
C	35,325	1/6th
D	31,891	1/6th
E	18,147	1/6th
F	49,296	1/6th

CP 171. Concurrent with recording an Amendment to the Master Declaration, the Owners Declaration was recorded that showed not only

an allocated interest for the developed units in the Owner's Association, but also an Allocated Interest in the Master Association for each developed unit. Exhibit C to the Owners Declaration breaks down the allocated interests as follows:

EXHIBIT "C"

Unit Numbers	Approximate Square Footage Unit	Allocated Interest	Allocated Interest in Courtney Ridge Master Association Condominium
1	1,307	1/11th	1/76th
2	1,323	1/11th	1/76th
3	1,323	1/11th	1/76th
4	1,323	1/11th	1/76th
5	1,323	1/11th	1/76th
6	1,323	1/11th	1/76th
7	1,323	1/11th	1/76th
8	1,323	1/11th	1/76th
9	1,323	1/11th	1/76th
10	1,323	1/11th	1/76th
11	1,323	1/11th	1/76th

CP 281. By the time the Fourth Amendment to the Owner's Declaration was recorded to add Phase IV, the Owners Association Members each had an allocated 1/92<sup>nd</sup> interest in the Master Association, and 1/54<sup>th</sup> interest in the Estates Association common elements. CP 313-316. Because the Owners Association did not nor does it currently have 92 units, this can only refer to an interest in the common elements in Airspace Units E and F of the Master Association.

A condominium refers to real property, portions of which are designated for separate ownership and the remainder of which are designated for common ownership solely by the owners of those portions. See RCW 64.34.020(9), RCW 64.34.224(2) regarding allocation of common element interests provides as follows:

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

This section is in keeping with the requirements of the Master Declaration. Article VIII of the Master Declaration addresses allocated interest and provides the formula for determining the undivided interest in the common elements which is determined by dividing 100 by the total number of units. See Section 8.1.1. CP 58. Section 8.1.3 regarding amendment of percentages provides as follows:

8.1.3 Amendment of Percentages. Subject to the right of Declarant to amend this Declaration, any other change in percentage interest must be approved by ninety percent (90%) of the first mortgages and unit owners, and an amendment must be made to the Declaration changing the percentage interest in a manner consistent with the terms of this Declaration. *As described above, the percentages of ownership in the common elements for each unit shall be changed whenever the number of units within the condominium changes.*

(emphasis added). CP 58. Thus, when units are added or removed, the common element interest is either diminished by adding units or increased by withdrawing units.

Contrary to the requirements of RCW 64.34.224(b) or section 8.1.3 of the Master Declaration, when the various individual units were transferred to the Owners Association and the Airspace Units were purportedly “withdrawn,” no reallocation of the remaining common elements occurred in the Master Association amongst the remaining units. If the airspace units A through D had properly been withdrawn from the Master Association, the various amendments should have resulted in a reduced number of airspace units within the Master Association, and a reallocation of the fractional interest in the common elements in the remaining units only. For example, Units E and F should have been left with a 50% interest each in the common elements of the Master Association. This is not what occurred and is not what is reflected in the governing documents.

**D. OWNERS ASSOCIATION MEMBERS ARE MEMBERS OF THE MASTER ASSOCIATION.**

By virtue of having an allocated interest in the common elements of the Master Association, the individual unit owners are members of the Master Association.

The Master Declaration defines “Owner” or “Unit Owner” as the “Owner of record, *whether one or more persons*, of a Unit.” See Section 1.7.27. CP 53. Section 9.3.2 of the Master Declaration regarding voting specifically contemplates that a unit might have more than one owner, which is the result when the airspace units were developed into multiple individual townhomes. CP 59. Nothing in Section 9.2.1 prevents the owners of the units within Courtney Ridge Estates from being considered multiple owners of the airspace unit on which their individual units were constructed. CP 58.

Puyallup Ridge took the position that “[a]n ownership interest in the Common Elements alone does not qualify the owner for membership in the Master Association.” Puyallup Ridge’s Motion for Summary Judgment, CP 26. This statement is contrary to the Master Declaration, which provides that an interest in the common elements is determined by dividing the number of units by 100. Further, common element allocation is specifically tied to unit ownership. See RCW 64.24.224(1). Ownership over the common elements is granted to the unit owners, not the Association, in an undivided interest.

Moreover, RCW 64.34.020(9) provides: “‘Condominium’ means real property, portions of which are designated for separate ownership and the remainder of which [the common elements] is designated for common

ownership solely by the owners of those portions.” The fact that ownership of the common elements is given to the individual unit owners in an undivided interest under the Condominium Act is also expressly recognized by Division One of the Washington Court of Appeals in *State Farm Fire & Cas. Co. v. English Cove Assoc. Inc.*, 121 Wn. App. 358, 364-66 (2004).

Thus, if the unit owners of the Owners Association have an interest in the common elements of the Master Association, as the various amendments certainly provide, it follows that they are considered unit owners of the airspace units, and that those airspace units still exist as a part of the Master Association. If those units still exist as a part of the Master Association, they are entitled to a vote in the Master Association, including the right to vote on the amendment recorded in January of 2014 that essentially eliminated the leasing restriction previously in place.

## **V. CONCLUSION**

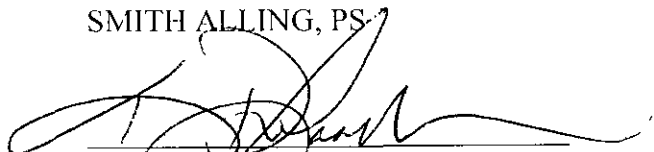
The trial court committed errors of law when it awarded Summary Judgment in Puyallup Ridge’s favor by granting its Motion on Reconsideration. The relationship between the Master Association and the Owners Association has not been severed, as the steps necessary to do so were never taken. Those statutory steps are not voluntary, but are mandatory. This left the Owner’s Association with an allocated interest in

the common elements of the Master Association and, as such, the individual Estates unit owners are members of the Master Association. Thus, their vote was necessary before an Amendment could be made to the Master Declaration.

The trial court's original decision on Summary Judgment was correct. The court's decision to grant reconsideration and reverse its decision was in error, and should be overturned on appeal.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of October, 2015.

SMITH ALLING, PS.



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DIVISION II

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STATE OF WASHINGTON

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DEPUTY

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

COURTNEY RIDGE ESTATES  
OWNERS ASSOCIATION, a  
Washington limited liability  
company,

Appellant,

vs.

PUYALLUP RIDGE ESTATES  
OWNERS ASSOCIATION, a  
Washington nonprofit corporation,

Respondent.

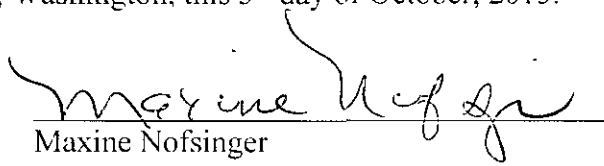
NO. 47843-9-II

CERTIFICATE OF SERVICE

Pursuant to the laws of the State of Washington, the undersigned certifies under penalty of perjury that a true and correct copy of the Brief of Appellant, both by email and by first-class mail this 5<sup>th</sup> day of October, 2015, to the following:

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DATED at Tacoma, Washington, this 5<sup>th</sup> day of October, 2015.

  
Maxine Nofsinger  
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